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ABSTRACT

The regulations that emerge from governmental departments have been framed in legal language by lawyers to withstand onslaught in case by case determinations. From a judicial context, lawyers may rightfully contend that the concepts of the law are bound up in legal terms, and therefore the technical language of the profession should remain unchanged. The consumer movement, however, wants readable and easily understood legal documents. The problem is that there is no yardstick against which to measure revised legal documents. A number of options have been suggested, but they, too, are not without problems. Readability formulas provide no measure of the number of abstract words used, the technical vocabulary used, and transformation complexity--any of which might increase the reading difficulty of the document. While a panel of experts might possibly agree on objective measures, the expense of convening such a panel would be prohibitive. General guidelines might permit a flexible approach, but are not very helpful to those who are embroiled in rewriting documents. And, while explicit guidelines would be very helpful, current research in document design reveals the difficulty of formulating such precise guidelines. The best option appears to be the pilot testing of a document on a sample of consumers, although the cost would make this approach impractical. (HOD)

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MAKING THE UNREADABLE READABLE: FROM "LEGALESE" TO PLAIN LANGUAGE

A Paper Presented at the Annual Conference

of the

College Reading Association

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The pressure for legislation to require that the documents of daily living, e.g., insurance policies, leases, credit transactions, be written in easily read language has gained momentum over the past few years. President Carter's Executive Order of March, 1978 which required review and revision of government documents to make sure they could be comprehended by the general public was paralleled by the adoption in New York State of the General Obligations Law, known as the Sullivan Law, requiring the use of clear and coherent language in leases and other contractual documents. Although similar legislative action in New Jersey was vetoed by GovernorByrne in 1979, a compromise version of the bill was passed by the 1980 Legislature and signed into law by the Governoron October 16, 1980.

The Problem in General

What is the fuss all about? The term "legalese" serves as the "whipping boy." While there appears to be no precise definition of the term "legalese", it is usually used derisively to refer to the archaic, redundant, and sometimes obtuse language which appears in legal documents.

To lawyers who have spent years in reading and using their professional language, the terminology of legal documents poses no problem. Lawyers speak like lawyers and write like lawyers and have spent years learning to do so. Some lawyers might maintain that a low level of consumer literacy in the population is at fault and that if the general populace were taught to read and comprehend appropriately, there would be no problem.

On the other hand, Dr. Donald Jones of Drew University has suggested that unless the language of our complex times and technologies is reduced to clearly understood language, there exists the possibility that specialists could manipulate our lives through the use of their language without our awareness of what was happening. He has stated, "Truthfulness(in language) can be both an armor and an arnament." (1979)

The study done by Robert and Veda Charrow (1979) can also be used to maintain that injustices might be done to those on trial in our courts if "legalese" is used in the judge's instructions to the jury. The Charrow study found that jurors' comprehension of those instructions was clarified through extensive rewriting of the sentences. In New Jersey, validity was lent to the impact of the Charrow study when the New Jersey Supreme Court recently ruled that a particular direction to a deadlocked jury should not be used since juror comprehension of the intent of the language used in the instruction could not be assumed.

While "legalese" is primarily the subject of this paper, other professions are under challenge. It is of interest to note that Joyce Carol Oates in the New York Times of November 5, 1980 reported that in response to criticism leveled by Gore Vidal against the obscure language used by some Princeton professors, the words "oneiromic," "fimbriated," and "phatic" appear to have been dropped. "Atrabilious" has been replaced by the phrase "in a rotten mood" and "hypaethral" has become the literal "without a roof on the house."

In another instance, a lawyer was asked to read the following which was part of a reading education report:

> Word recognition during on-going reading can be facilitated by expectancies based on the prior sentence context. Interactive-compensatory processing appears to be operating during this process since poorer readers often show larger contextual facilitation effects than do good readers....However, this additional contextual facilitation is purchased at cost. The conscious expectancy process uses attentional capacity and thus leaves fewer cognitive resources left over for comprehension operations to work on integrating larger text units. (Stanovich, 1980).

His comment was a horrified, "Why don't reading educators learn to communicate in English?" Since professional language is often used when teachers communicate children's reading problems to parents, one might anticipate that there will be in the near future language-frustrated comprehenders at parent-teacher conferences.

It could be conjectured that lawyers, the Princeton professors, and reading educators use professional language to promote themselves as "educated". At a conference on legal language (September, 1979), Professor Stanley Katz, an historian of American Law at Princeton, discounted the idea that legal language is the result of a conspiracy of lawyers to maintain an elitism in language. Both Katz and Professor Jo-Ann Crandall of the Center of Applied Linguistics, another speaker, referred to some of the characteristics of legal documents. These characteristics can be categorized according to the contexts from which they have arisen:

From an historical context, one can explain

1. The use of words from old English, e.g., aforesaid, whereas
2. Latin words, in camera, in persona
3. French words, e.g., tort, easement
4. Specific items, e.g., eminent domain, negotiable instruments
5. Extreme precision, e.g., for and in consideration of the sum of... do by these presents... discharge of and from all responsibility...
6. Use of synonyms for emphasis, e.g., cease and desist, sell and convey
7. The use of several embeddings in one sentence, e.g.,

   "As collateral security for the payment of the indebtedness of the undersigned hereunder and all other indebtedness or liabilities of the undersigned to the bank, whether joint, several, absolute, contingent, secured, unsecured, matured or unmatured, under any present or future note or contract or agreement with the bank (all such indebtedness and liabilities

being hereinafter collectively called the "obligations"), the bank shall have, and is hereby granted, a security interest and/or right of set-off in and to ....(unfinished sentence!)

Embeddings comprise an area of particular criticism. To maintain all of the thoughts in a ten-line sentence is a special challenge.

From a political context, it is understandable that the regulations which emerge from governmental departments have been framed in legal language by lawyers. The regulations have been designed to withstand onslaught in case by case determinations.

From a judicial context, lawyers may rightfully contend that the concepts of the law are bound up in legal terms, and therefore, the technical language of the profession should remain unchanged. Such terms as mortgagor, mortgagee, obligor, heir, in fee simple, warrant, devise, bequeath, distributee carry meanings which have had judicial interpretation. Part of a lawyer's representation of a client is to insure that the client becomes cognizant of the effects of the language in any document on the client's rights and responsibilities. The consumer movement, on the other hand, wants the same result, but wants it without recourse to a lawyer's interpretation. The contention is that consumers are entitled to a readable and easily understood document--one able to be evaluated by consumers themselves.

Standards for Clarity

The national executive and state legislative steps have already produced some changes in legal documents, albeit not without strain. The problem is that a yardstick against which to measure whether revised legal documents meet the criteria of Plain English is not readily available. In her studies of legal language (1977, 1978, 1979), Veda Charrow discusses the general lack of agreement concerning the nature of Plain English and the difficulties inherent in the drafting and rewriting of legal documents.

Dr. Janice Redish, Director of the Document Design Center in Washington, D.C., has outlined some of the desirable features of a legal standard for clear language: that it be objective in application; economically feasible for industry, government, or consumers; and workable, in that it should distinguish between understandable and non-understandable documents.

It is not a simple matter to achieve a standard of clarity. Dr. Redish presented five options on this issue (referred to in Simply Stated, September,1980) and assessed them against the criteria of objectivity, cost, and validity.

Option #1--the use of readability formulas. Well-known formulas such as the Fry, Smog, and Flesch formulas, use sentence length and word length as their variables. These provide no measure of the number of abstract words used, the technical or professional vocabulary used, transformational complexity (e.g., embeddings, left v. right branching sentences, or other syntactic or semantic complexities), any of which might increase the reading difficulty level of the document. In addition the reliability of one of the formulas (Fry) has been recently challenged (Fitzgerald, 1980).

Option #2--a panel of experts. Panels consisting of lawyers, linguists, psycholinguists, consumer representatives, editors, sociologists, and representatives from business and finance might possibly agree on objective measures, but the expense of convening a panel would be prohibitive.

Option #3--general guidelines. These would permit a flexible approach, but are not very helpful to those who are embroiled in rewriting documents. The guidelines recommended by the New Jersey Plain English Law can be considered as "general" in nature, e.g., (to avoid) "Sentences that are of greater length than necessary." However, the onus of determining whether the contract as a whole complies with the act has been relegated to courts or a primary State Regulator.

Option #4--explicit guidelines. These would be very helpful, but current research in document design reveals the difficulty of formulating

such precise guidelines.

Option #5--pre-testing documents on consumers. The importance of pre-testing has been illuminated by the work of Dr. Leo Campbell of Rutgers University. In re-designing the IRS 1040 document, he found that consumers made as many errors in interpreting the re-designed document as had been made on the original. Piloting a document by testing it out on a sample of consumers would probably be the best option; however, the cost would make this approach also impractical.

Suggestions for Rewriting

Linguistic research has pinpointed many of the characteristic features of legal language which interfere with compreheneion. These features include not only vocabulary items, e.g., eminent domain or negotiable instrument, but also syntactic features. The editor should be aware of the following pitfalls:

1. Multiple negation
2. Overuse of passive constructions, especially truncated passives
3. Multiple embeddings
4. Nominalized constructions
5. Multiple propositions which are not clearly, cohesively linked by means of repetition and transitional markers
6. Omission of the relative pronoun and copula (who, which is...)
7. Long strings of nouns

A more definitive list must await the results of ongoing research. It is reassuring to know that researchers at the Document Design Center of the American Institutes of Research are actively pursuing ways of making the unreadable readable.

Summary

This paper has attempted to identify both the general and specific problems involved in the language of legal documents. It has delineated the options available to assure clarity and comprehension and has listed several linguistic features to avoid in redesign of consumer documents.

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